

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : ANDERSON, D.M. et al.
Patent No. : 7,758,890
Issue Date : July 20, 2010
Serial No. : 10/788,413
Filing Date : March 1, 2004
For : TREATMENT USING DANTROLENE
Examiner : WANG, Shengjun
Art Unit : 1617

**REQUEST FOR RECONSIDERATION OF THE
PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)**

Mail Stop: Petitions

July 29, 2010

Commissioner for Patents
Washington, DC 20231

1. This is a Request for Reconsideration of the Patent Term Adjustment for the above-referenced application pursuant to 37 C.F.R. §1.705(d).
2. The required fee set forth in 37 C.F.R. §§ 1.705(b)(1) and 1.18(e) of Two Hundred Dollars (\$200.00) is concurrently paid by credit card herewith.
3. An Issue Notification/Determination of Patent Term Adjustment (“Determination”) was mailed June 30, 2010 in the referenced application indicating the Patent Term Adjustment of 1113 days. A copy of the Determination is attached hereto as Exhibit A.
4. Applicant hereby requests recalculation of the patent term adjustment under 35 U.S.C. §154(b) indicated in the June 30, 2010 Determination.
5. Statement of Facts Involved Pursuant to 37 C.F.R. §1.705(b)(2):

Subsections (i.) through (iv.) below are presented in satisfaction of the requirements set forth in the similarly numbered subsections of 37 C.F.R. §1.705(b)(2).

(i.) The correct Patent Term Adjustment is 1114 days. The basis of the correction is that the original June 30, 2010 Determination calculated the “PTA 36 Months”, which is the “B delay”, to end on a “12-11-2008” date. Instead, this “PTA 36 Months” should have been calculated to end on the “12-12-2008” date, which is the actual date of filing of the RCE. Further, nowhere in the Transaction History is this “12-11-2008” date found to be associated with a transaction.

(ii.) The following table lists the pertinent periods in the PTA recalculation. The pertinent periods are also graphically presented in Exhibit B attached hereto, which is a marked-up copy of the Transaction History of the referenced application (as downloaded from PAIR at USPTO.gov on July 26, 2010).

Period	Delay/Overlap	Source	Days
1.	A-type USPTO delay: 37 C.F.R. §702(a)(1) 14 mo. mark (05/01/2005) to 1 st Action (06/11/2007)	USPTO	771
2.	B-type USPTO delay: 37 C.F.R. §702(b)(1) 3 yr. mark (03/01/2007) to RCE filing (12/12/2008)	USPTO	652
3.	Overlap in days for A/B periods 1 and 2 (03/01/2007 to 06/11/2007)	USPTO (A/B Overlap)	(102)
4.	Applicant delay: 37 C.F.R. §704(b) 86-day extension in responding to 09/25/2007 non- final rejection.	Applicants	(86)
5.	Applicant delay: 37 C.F.R. §704(b) 91-day extension in responding to 06/12/2008 final rejection.	Applicants	(91)
6.	Applicant delay: 37 C.F.R. §704(b) 54-day extension in responding to 03/03/2009 non- final rejection.	Applicants	(54)
7.	A-type USPTO delay: 37 C.F.R. §702(a)(2) Issuance of Notice of Allowance at 5 days over four mos. after Applicant’s 07/27/2009 response.	USPTO	5
8.	A-type USPTO delay: 37 C.F.R. §702(a)(4) Actual Issuance of Patent at 19 days over four mos. after Applicant’s 03/01/2010 issue fee payment.	USPTO	19
Total PTA			1114

(iii.) The instant application is not subject to any terminal disclaimer.

(iv.) As shown in the table above, indicated periods 4-6 represent reductions in the Patent Term Adjustment arising from Applicant delay, under 37 C.F.R. §704(b).

6. In view of the foregoing, Applicant hereby petitions for a recalculation of the Patent Term Adjustment to which the patent issuing from the instant application is entitled and issuance of a new determination of PTA in accordance therewith.
7. It is believed that no fees other than those paid concurrently are due in connection with the filing of this paper. However, should it be deemed that any other fee is due in connection with this paper, authorization is hereby given to charge such fee to Deposit Account No. 02-2275.

Respectfully submitted,

LUCAS & MERCANTI, LLP

Dated: July 29, 2010

CUSTOMER NO. 20311

By: /Elizabeth Lee/
Elizabeth Lee
Reg. No. 66,325

Attachments

EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,413	07/20/2010	7758890	820.1020	4972

20311 7590 06/30/2010
LUCAS & MERCANTI, LLP
475 PARK AVENUE SOUTH
15TH FLOOR
NEW YORK, NY 10016

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment is 1113 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Application Assistance Unit (AAU) of the Office of Data Management (ODM) at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site <http://pair.uspto.gov> for additional applicants):

David M. Anderson, Ashland, VA;
Benjamin G. Cameransi JR., Georgetown, SC;
Vincent M. Conklin, Richmond, VA;

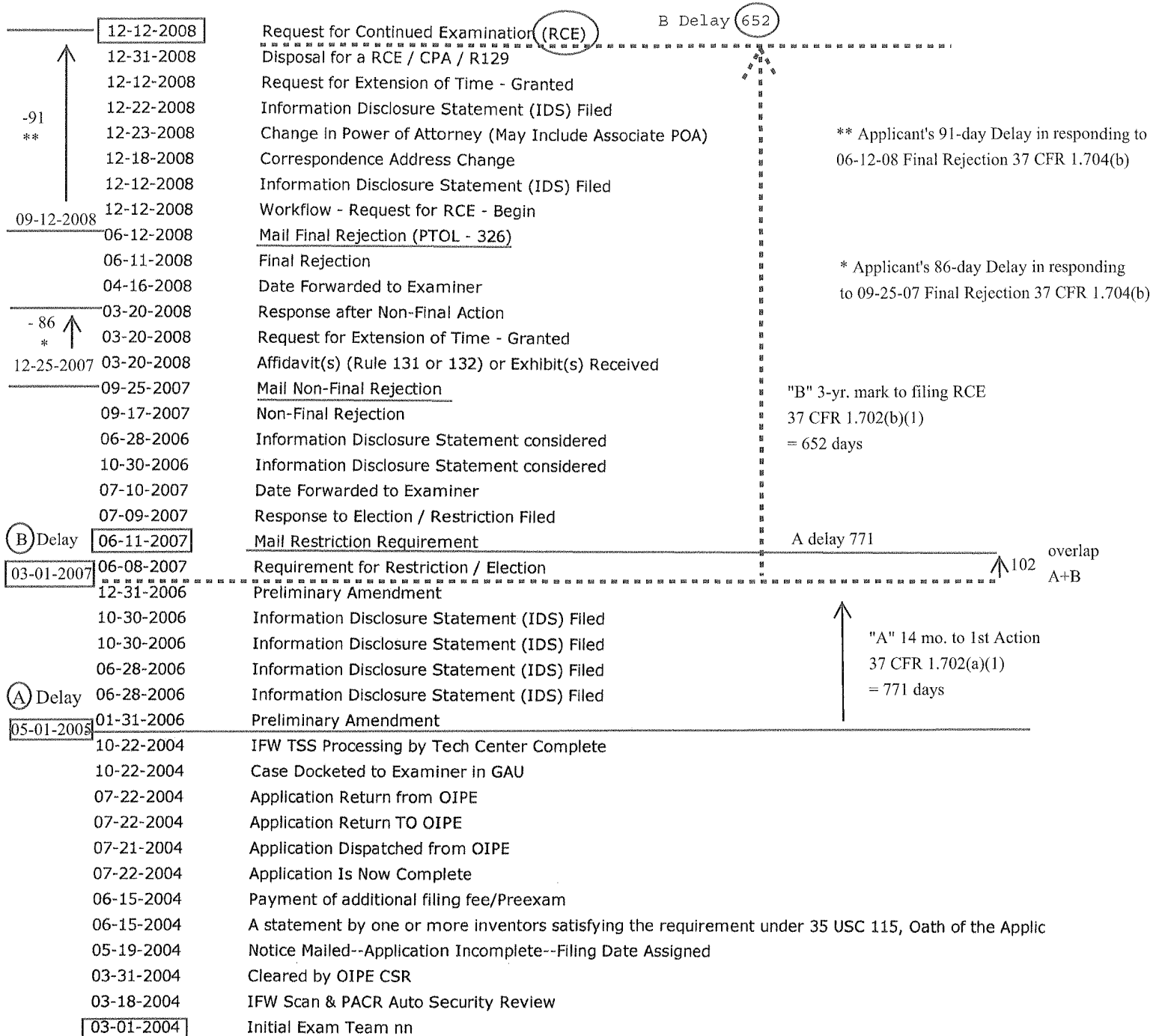
EXHIBIT B

10/788,413 TREATMENT USING DANTROLENE

07-26-2010::13:11:36

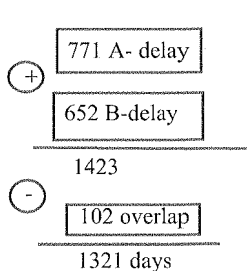
Transaction History

Date	Transaction Description	
07-20-2010	Recordation of Patent Grant Mailed	
07-01-2010	Email Notification	***** "A" USPTO 19-day Delay in issuing a patent
06-30-2010	Issue Notification Mailed	after Applicant's 03-01-2010 issue fee payment
07-20-2010	Patent Issue Date Used in PTA Calculation	37 CFR 1.702(a)(4)
06-24-2010	Dispatch to FDC	
06-24-2010	Email Notification	
06-18-2010	Mail-Petition Decision - Dismissed	
06-17-2010	Petition Decision - Dismissed	
02-19-2010	Petition Entered	
03-09-2010	Application Is Considered Ready for Issue	
03-01-2010	Issue Fee Payment Verified	
03-01-2010	<u>Issue Fee Payment Received</u>	
11-24-2009	Reference capture on IDS	
11-24-2009	Information Disclosure Statement (IDS) Filed	
01-14-2010	TC Return to Pubs	
12-28-2009	Pubs Case Remand to TC	
01-04-2010	Email Notification	
01-04-2010	Mail Miscellaneous Communication to Applicant	
12-29-2009	Miscellaneous Communication to Applicant - No Action Count	
11-24-2009	Information Disclosure Statement considered	
12-02-2009	Electronic Review	
12-02-2009	Email Notification	
12-02-2009	Email Notification	
12-02-2009	Mail Examiner's Amendment	
12-02-2009	<u>Mail Notice of Allowance</u>	
11-24-2009	Information Disclosure Statement (IDS) Filed	**** "A" USPTO 5-day Delay in responding to
11-24-2009	Document Verification	Applicant's 07-27-09 Response 37 CFR 1.702(a)(2)
11-24-2009	Notice of Allowance Data Verification Completed	
11-24-2009	Case Docketed to Examiner in GAU	
11-23-2009	<u>Examiner's Amendment Communication</u>	
07-27-2009	Information Disclosure Statement considered	
10-06-2009	Case Docketed to Examiner in GAU	
09-18-2009	Date Forwarded to Examiner	*** Applicant's 54-day Delay in responding to
07-27-2009	<u>Response after Non-Final Action</u>	03-03-09 Office Action 37 CFR 1.704(b)
07-27-2009	Request for Extension of Time - Granted	
07-27-2009	Information Disclosure Statement (IDS) Filed	
07-27-2009	Information Disclosure Statement (IDS) Filed	
12-22-2008	Electronic Information Disclosure Statement	
04-30-2009	Mail Examiner Interview Summary (PTOL - 413)	
04-20-2009	Examiner Interview Summary Record (PTOL - 413)	
03-03-2009	<u>Mail Non-Final Rejection</u>	
03-02-2009	Non-Final Rejection	
02-19-2009	Examiner Interview Summary Record (PTOL - 413)	
12-22-2008	Information Disclosure Statement considered	
12-12-2008	Information Disclosure Statement considered	
12-12-2008	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	
12-12-2008	Electronic Information Disclosure Statement	
12-31-2008	Date Forwarded to Examiner	
12-31-2008	Date Forwarded to Examiner	



Close Window

Filing Date: 03-01-2004
 14 month mark: 05-01-2005
 1st OA: 06-11-2007
 3 Yr. mark: 03-01-2007
 RCE filed: 12-12-2008



Appl. delay	PTO delay
(-91)	(+5)
(-86)	(+19)
(-54)	
231 days	24 days

overlap A + B: 102 days

$$PTA = (1321 + 24) - (231) = 1114 \text{ days}$$